(1992) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4518 of 1989

Manish and Company APPELLANT

Vs

The Municipal Board RESPONDENT

Date of Decision : 12-05-1992

Acts Referred:

Rajasthan Municipalities (Octroi) Rules, 1962 — Rule 14
Rajasthan Municipalities Act, 1959 — Section 104

Citation : (1992) 1 WLN 461

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—In all these writ petitions, an identical question of law and fact is involved, therefore, they are disposed of by this common order.

2. The principal question, which has bean agitated in these writ petitions is whether the entry No. 144 of the Notification dated 1.7.1969 (Annex. 1) issued by the Executive Officer, Municipal Board, Balotra covers the goods which are brought in to by the petitioner or entry No. 1 55 of the said octroi list.

3. For the convenient disposal of these writ petitions, the two entries are reproduced as under:

114& iskVkl gj fdLe] QkLQsVl] esXusf"k;e vkSj vkDlkbM] gj fdLe] lksMk gj fdLe vykok diM+k /kksus dk vyeksfu;k lYQsM] vU; jlk;u o xSl tks ntZ ugh gS "kq) djus okyh pht gj fdLe A^^------------- 8-75 lSdM+k

155& rkys gj fdLe] dCts] pVduh] vkSj blh izdkj dk leku dqlhZ] eqM~Ms] iyax] csap] ik;s lkns ;k jaxhu] fQYVj gj fdLe] udyh lksus] pkanh ds crZu ehukdkjh ds ydM+h o lany dh cuh gqbZ phts ia[ks] gj fdLe dh eksecRrh] [kkyh cksrys] gsjk] rEckdw o lQj dk lkeku] xn~ns] dkBh vU; lkeku eNyh idM+us o f"kdkj dk gj lkeku tks ntZ ugh gS] [ksy dk lkeku] fy[kus dh lkexzh] jax] jksxu piM+h vkfn flxjsV ds dkxt] jaxeky] nhokj ij yxkus dh ltkoV dk dkxt] jaxhu o gj fdLe dh iWkfy"k] njkt]

Hkjus dk elkyk] iksVk''k] gYnh dk ikmMj] gj izdkj ds jax dk elkyk----------------150 lSdM+k

4. For the convenient disposal of these writ petitions, the facts given in the case of Manish and Company v. Municipal Board, Balotra S.B. Civil Writ Petition No. 4518/1989, are taken into consideration.

5. The petitioner firm is engaged in the work of textiles processing. At different stages of the processing of the cloth i.e. mercerising, bleaching, dyeing, finishing printing etc. different types of chemicals and starch etc. are used. Ultimately, the finished cloth is sold by the petitioner firm in the market. Different types of chemicals and starch are needed in the textile processing. The petitioner firm purchased from the various business concerns situated all over India these chemicals and starch etc. and they are brought within the municipal limits of the Municipal Board, Balotra for use and consumption therein. The State Government while exercising power u/s 104 of the Rajasthan Municipalities Act, 1959 (referred to hereinafter as ''the Act'') imposed certain octroi duty on the goods and animals brought within the municipal limits of the respondent Board. Therefore, they issued a notification dated 1.7.1969 prescribing the various rates of octroi duty on different goods and animals, a copy whereof issued by the Executive Officer, Municipal Board, Balotra has been placed on the record as Annex.1.

6. It is submitted that there is on item i.e. starch which is not covered by the aforesaid notification but still octroi duty on starch at valorem at the rate of 1.5 per cent has been collected by the respondent Board. When the petitioners came to know that starch is not liable to be subjected to octroi duty, they approached the respondent and higher authorities, but without any result. Thereafter on 24.12.1987 a notification came to be issued by the State Government, whereby certain goods were included in the notification which also includes Starch and the rate prescribed was Rs. 1/- per quintal. A copy of the notification dated 24.12.1987 has been placed on the record as Annex. 2. It is submitted that after publication of the aforesaid notification the Municipal Board was under an obligation to charge octroi duty on starch at the rate of Rs. 1 /- per quintal, but it is persisting on charging at valorem octroi duty at the rate of Rs. 1.5 per cent. It is relevant to extract the notification dealing with starch which reads as under:

2& pkoy o budk nfy;k] vkVk lwth] eSnk] v[kjksV] LVkpZ dks lfEefyr djrs gq, lHkh izdkj dk puk vjgj] eawx] elwj] mM+n] eVj] Nksyk] eksB] dsljh nky] vkSj dqYFkh vkSj buds cslu nky dks lfEefyr djrs gq, A

7. Mr. Mridul, learned Counsel for the respondent has raised a preliminary objection regarding maintainability of the writ petition and submitted that since the present case involves essentially a question of fact that whether the goods brought by the petitioner are covered by entry No. 144 or entry No. 155 of Annex. 1 or entry No. 2 of Annex.2, therefore, this Court should not enter into this factual enquiry and leave the petitioner to agitate the issue before the

authority prescribed u/s 139 of the Act and Rule 14 of the Rajasthan Municipalities [Octroi) Rules, 1962 (referred to hereinafter as ''the Rules''). Learned Counsel submitted that the petitioner is not an aggrieved person, therefore, he is not entitled to maintain the writ petition. Lastly, it is submitted that this writ petition involves complicated question of fact, therefore, this Court should not enter into this controversy.

8. There is no two opinion in the matter that the petitioner brings various kinds of chemicals, caustic soda and starch for the purpose of processing grey cloth and giving it finished shape including dyeing and ultimately sale such finished products in the market. But the question is that whether all the materials which are brought by the petitioners and used for processing the grey cloth into finished goods come within the extended definition of the word ''chemicals'' as used in Entry No. 144 or they are to be covered by Entry No. 155 which says ^^gj izdkj ds jax dk elkyk^^. The question before me is that whether the general expression used in Entry No. 144 i.e. Chemicals should cover this or Entry No. 1 55 which says ^^gj izdkj ds jax dk elkyk^^. Apart from these two items/entries there is one more item which is caustic soda. This is also specifically included in the Entry No. 144, namely, ^^lksM+k gj fdLe dk^^ But the respondent submits that this is also one of the ingredients of ^^gj izdkj ds jax dk elkyk^^. Therefore, it is covered by Entry No. 1 55. For starch also the respondent covered it by Entry No. 1 55 i.e. ^^gj izdkj ds jax dk elkyk^^

9. Both the parties filed affidavits in the case of Naveen Chemical Industries v. Municipal Board, Balotra S.B. Civil Writ Petition No. 1996/1989 supported by opinion of the experts. Dr. N.K. Mathur, Professor & Head Department of Chemistry (Retd.), University of Jodhpur, Jodhpur who is also an Emeritus Scientist and working on Research Projects of Department of Science and Technology Government of India, has opined after examining 120 items which are being used in the textile processing and are brought by the petitioners within the municipal limits of the respondent Board that they fall in the expression ''chemicals''. It has been observed as under:

Hence, I conclude that all these substances being used in chemical processing of Textile in Balotra by various processing units only fall under the definition of chemicals.

10. Opinion of another expert i.e. Dr. S.P. Garg, Associate Professor of Chemistry, University of Jodhpur has also been placed on record by respondent Municipality. Dr. Garg after examining these items has opined as under:

I have examined the list of items numbering 1-120 mentioned in affidavit of Prof. N.K. Mathur and found that most of these items are textile auxiliaries used in textile industries for washing, bleaching, dyeing, printing, finishing textile materials. Many of these with their trade names are used as surfactants, emulsifiers, fixers, softners, carriers, detergents, antifoaming, bleaching and wetting agents in textile industries. For example cynamide D.C.D.A., Fixotex, Fixanol, Hicofix, Sandofix (item No. 39, 44, 52 and 108) are usually used as dye fixing agents; Cirrasol, lissapol, polycol, PEG, Perminal, T.R. Oil etc. (item Nos. 24, 25, 78, 90-93, 95, 112) are used as surface active agents. Other items with common and trade names are used for bleaching, dyeing, printing and finishing.

Dyeing is the process of colouring textile materials with dye liquor. Normally the dye liquor consists of dye, water and an dye auxiliary, which may include a detergent, carrier, levelling, antifoaming and wetting agents.

He has further observed as under:

I have examined the list of items numbering 1-120 mentioned in affidavit of Prof. N.K. Mathur and found that most of these compounds are textile auxiliaries used in textile industries for washing, bleaching, dyeing printing and finishing textile materials.

Few of these componds such as bleaching powder, formaldehyde, and formaline (item Nos. 18, 42 and 45 respectively) are used as disinfactants besides their other applications.

11. Another opinion of Dr. Kalyan K. Banerji, Associate Professor of Chemistry, University of Jodhpur has been produced which reads as under:

I have examined the Schedule A of M/s. Naveen Chemical Industries, Balotra. Item Nos. 10, 11, 14, 16 and 19 are brand names. Unless their ingredients are known, their nature and utilities cannot stated. All other items are general utility chemicals and are put to diverse uses including dyeing processes.

12. It is also mentioned in para 2 of the reply to the rejoinder as under:

Thus, it is obvious that these items relate in one way or the other with the textile processing and items other than 18,42 and 45, even though they are chemicals fall under entry 155.

13. From the survey of the reports of the experts there is no two opinion that all the individual items which are being brought by the petitioner within the municipal limits for textile process are by and large chemicals. Once it is held that they are chemicals by different names and their constituents are chemical then they will squarely fall in entry No. 144 under the heading. From the reports submitted by both the Associate Professors which are filed by the respondent clearly support the opinion given by the Professor and Head of the Department Dr. N.K. Mathur [Retd.]. From the opinion of the three experts produced from both the sides it is apparent that all the individual items which are being brought by the petitioners are chemicals and once they are chemicals then they will squarely fall in the expression and the Municipal Board is entitled to charge octroi on it at the rate of 0.75%.

14. It is submitted by the respondent Municipal Board that it will fall within the expression ^^gj izdkj ds jax dk elkyk^^. It is not clear that what do they mean by the expression ^^gj izdkj ds jax dk elkyk^^. The expression is vague and it

cannot be capable of comprehending that what items shall fall under this entry. The citizens cannot be made to guess on account of vague entry and no amount of unfettered discretion can be entrusted in the hands of the taxing authorities to interpret the items they like it, specially when there is a specific item which is understandable and with exactitude it could be operated then in that case the item which squarely covers the goods should be applied instead of vague item, it may be possible that all these chemicals which may ultimately go to constitute jax dk elkyk but it is still not known that which of the item of these chemicals will go to form jax dk elkyk, because from the opinion given by the experts that some of the chemicals might be used for the purposes of washing the grey cloth or for the purpose of giving shinning to the cloth or for the purpose of giving a fast colour to the cloth, some might be used for the purpose of waxing the cloth and so on so forth. To put all kinds of these items in a one vague, entry like jax dk elkyk, will be hazardous specially when there is a definite item known as jax dk elkyk, mentioned in entry No. 144, which squarely covered all these items then the entry which is more exact and capable or covering all these items individually should be preferred instand of an entry which is vague in nature. It is needless to emphasise that a taxing entry has to be construed strictly and normally the names given in the commercial parlance has to be used and not its generic and to the ultimate purpose it is put into use.

15. In this connection reference may be made to a decision of their Lordships of the Supreme Court in the case of Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, wherein it was observed as under:

In interpreting items in statutes like the Excise Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that Is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense I which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.

16. In Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. : 1988(37)ELT480(SC) , it was observed as under:

Where no definition is provided in statute itself for ascertaining the correct meaning of a fiscal entry reference to a dictionary is not always safe as it gives all the different shades of meaning. Where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. If special type of goods is subject matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word. The trade meaning is one which is prevalent in that particular trade where that goods is known or traded. Where, however, there is no evidence either way then the definition given and the meaning flowing from particular statute at particular time would be the decisive test.

17. In Asian Paints India Ltd. Vs. Collector of Central Excise, , it was observed as under:

The commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it.

18. In Nagar Mahapalika, Bareilly Vs. State of U.P. and Others, , it was observed as under:

While giving a meaning to an item contained in the Schedule of articles, the court should normally give it a meaning intended by the framers of the Schedule by looking at the various articles mentioned in a particular group. All the items in one group should be considered in a generic sense.

19. In this back ground of the legal position that emerges from the various decisions of the Hon''ble Supreme Court is that the taxing statute has to be construed strictly and the phrases and words should normally be given the meaning, unless otherwise mentioned in the statute which is understood in common parlance or in commercial parlance. In the present case a perusal of entry No. 144 shows that this is a group of composite entry in which various articles have been mentioned like potas, Phosphate, Megnesiam, and Oxide, Soda except that of washing cloth, Ammonia Sulphade and lastly ^^gj izdkj ds jax dk elkyk^^ i.e. other chemicals. This entry though proceeded with particular items and then it has been concluded with the general word i.e. any other chemicals. Therefore, construing this entry as a whole it appears that under this entry all the chemicals have been mentioned and, therefore, all the chemicals which are brought in the municipal limits shall be subjected to octroi duty at the rates mentioned against it i.e. 0.75%. As against this the entry No. 155 appears to be a composite and it appears to be more of residuary nature as a perusal of this entry as reproduced above would show that in this entry is heterogeneous items have been included and not homogeneous items as included in entry No. 144. The entry No. 155 includes silver, artificial gold and silver utensils, Meenakari wood including sandal wood, candles, empty bottles, tobbaco, travelling kits, sports goods, colour police, turmeric powder and lastly all kinds of colour ^^gj izdkj ds jax dk elkyk^^. Therefore, in this back- ground if we construe ^^gj izdkj ds jax dk elkyk^^, then it appears that this expression is vague and it does not convey what exactly would comprenend in this entry. As against this the expression chemical appearing in entry No. 144 is specific and it is understandable that all kinds of chemicals shall fall under this entry. It is also apparent from the opinion expressed by the three experts from the University who are competent to express the opinion on the subject that out of all the 120

items brought in by the petitioners barring a few falls under the general expression of chemicals. Therefore, under these circumstances, I am of the opinion that the expression chemical will cover the cases of the petitioners and they will be liable to pay octroi at the rate of 0.75%.

20. The next item, which has to be taken into consideration is caustic soda. Entry No. 144 specifical named soda of all kinds excluding the soda meant for washing the clothes. Therefore, so far as this caustic soda is concerned, the Entry No. 144 is very clear and the import of caustic soda is only subject to octroi under Entry No. 144. An attempt has been made to bring this item under Entry No. 155 in the extended meaning of ^^gj izdkj ds jax dk elkyk^^, by no stretch of imagination, could be brought into this expression. The Entry No. 144 is very clear and all kinds of soda will fall in this category except the soda used for washing the clothes.

21. The next item which has been agitated in this writ petition is item starch. The starch was earlier not included either in Entry No. 144 or Entry No. 1 55, but still the respondents were levying the octroi duty on this item. But subsequently by the notification dated 24.12.1987, the item starch has been subjected to octroi duty, the rate of octroi duty for starch is Rs. 1/- per quintal. There cannot be any two opinion about this entry and this is also not disputed that prior to this was not subjected to octroi duty. The respondent has only taken a resort to entry No. 155 of Annex. 1 and wanted to bring it in the extended meaning of ^^gj izdkj ds jax dk elkyk^^, This by no stretch of imagination could be included in such entry. By notification dated 24.12.1987 the starch is now subject to octroi duty under Entry No. 2 of the aforesaid notification and the respondent Board is entitled only to recover octroi duty at the rate of Rs. 1/- per quintal.

22. An argument under this head has also been raised that earlier i.e. prior to 1987 the respondent Board charged the octroi duty though there was no specific notification. Therefore, that recovery was illegal and the same should be refunded. Next, it is submitted that the respondent continued to charge octroi duty at the rate of Rs. 1.50% in inspite of the notification dated 24.12.1987. Therefore, the excess amount recovered from the petitioners should be ordered to be refunded. This question of refund I shall deal later on. But it is held that prior to the notification dated 24.12.1987 starch was not covered by any entry.

23. Now, I shall dispose of the preliminary objections raised by Mr. Mridul.

24. Learned Counsel has submitted that the petitioner has an alternative remedy u/s 139 of the Act read with Rule 14 of the Rajasthan Municipalities (Octroi) Rules, 1962. I have perused Section 139 of the Act and Rule 14 of the Rules. From a perusal of both these provisions, it could be said that the incumbent can challenge the order of levy made by the Octroi Superintendent before the Executive Officer by filing an appeal. But the question before me is the applicability of particular entry. Since the arguments were raised before me at length and I have examined the matter exhaustively as mentioned above,

therefore, I am of the opinion that it will not be a sound exercise of jurisdiction to dismiss these writ petitions on the ground of availability of statutory alternative remedy. Connected with this is the question regarding disputed questions of facts. In the present case, no dispute, questions of fact arise. The question is as to which of the entry will cover the goods like chemicals, starch etc. brought within the municipality. The applicability of the entry necessarily does not involve the investigation of facts, more-so, when the experts opinion has been on the record. Thus, the writ petitions cannot be dismissed on the ground that this involves disputed questions of facts.

25. Lastly, learned Counsel submitted that the petitioner is not an aggrieved person. This is also not correct. As a matter of fact, it is the petitioner which brings the goods within the municipal limits and has to pay the octroi at the first point and, therefore, it may be possible to transfer that liability of octroi to the ultimate consumers. But nonetheless the petitioner has to pay at the first point and it cannot be said that simply because the ultimate liability will be borne by the Consumers therefore, the petitioner will not fall within the expression ''aggrieved person''. Thus, this contention of the learned Counsel is also not well founded.

26. The next question, which has been agitated by Mr. Lodha is regarding the refund. As already held above that so far as the starch is concerned, it was not subject to octroi duty prior to December, 1987, but subsequently by the notification dated 24.12.1987 (Annex.2) this starch has become subject to octroi duty. So far as the question of refund is concerned, Mr. Mridul, learned Counsel for the respondent has submitted that refund in such cases cannot be given because the petitioner has ultimately passed on the octroi to the consumers, therefore, it will not be proper to direct the refund of the amount recovered from the petitioner under the heading of starch and consequently the enhanced amount which has been levied after the notification dated 24.12.1987 has also been passed on to the consumers. In support of this contention the learned Counsel has invited my attention to the decision of their Lordships of the Supreme Court in the case of Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, regarding refund of sales tax. It was observed as under:

Refund of sales tax as an incentive for industrialisation- Distinct from exemption- No law can be made to refund tax to manufacturer realised under the statute-It would be ultra vires- Refund to sales tax being impermissible under the constitutional scheme, the promise to refund sales tax held not enforce-able in a court of law.

27. Mr. Lodha has invited my attention to Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others, , wherein the refund was ordered to the company. It was held that in the absence of any privity between the dealer and the municipality, the dealer is not entitled to refund, but the company is entitled to get the refund and the dealer can recover the money from the company. This observation was made because the Municipal Council had given an undertaking

to refund the octroi tax charged from the petitioner on the diesel exported to Dangiawas outside the limits of Municipal Council, Jodhpur. The High Court found that the octroi has been paid by the Indian Oil Corporation and not by the respondent No. 1 and, therefore, directed that the Municipal Council would have to refund to the Indian Oil Corporation the amount of octroi paid on the petroleum products re-exported by it Dangiawas out let for supply to respondent No. 1 and the respondent No. 1 may recover the same from the Indian Oil Corporation. In these peculiar facts and circumstances of this case this order was passed by their Lordships of the Supreme Court.

28. But in the present case, it is not the case of the petitioner that he has not passed on the octroi duty recovered from it to the consumers. Therefore, once the petitioner has already sold out the finished goods prepared out of the goods brought by him within the municipal limits. It is unthinkable that the petitioner would not pass on the octroi duty to the consumers and pay it from his own pocket. Therefore, the question of refund in these cases of octroi recovered from the petitioner does not arise. This will amount to illegal enrichment of the petitioner as the duty has already been passed on to the consumers. Therefore, the petitioner cannot claim that duty for its own benefit. Recently, the Hon''ble Chief Justice in the case of Jaipur Minerals and Chemicals v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 2092 of 1980 decided on 25.3.1991 has taken the same view in the matter of excise refund. Likewise, Hon''ble J.R. Chopra, J. in the case of Pesticides India v. The State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1628 of 1990, decided on 4.10.1991 has followed that decision. In both these cases the decision given by their Lordships of the Supreme Court in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, has been quoted in which it has been observed as under:

We must, however, observe that these imposts and levies have been imposed by virtue of the decision of this Court in State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others, . The State as well as the petitioners and manufactures have adjusted their rights and their position on that basis except in the case of State of Tamil Nadu. In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondents States are restrained from enforcing the said Levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisation already made. The writ petitions...

It was further observed as under-

...It is, therefore, necessary to declare that in future no further realisation will be made in respect of this by the State Government from the petitioners....

29. Therefore, so far as the refund of octroi duty charged by the Municipalities prior to the filing of these writ petitions is concerned, the same cannot be

ordered to be refunded to the petitioner. However, as I have already held above the petitioner will be covered by Entry No. 144 for all kinds of chemicals, may be individual chemical like caustic soda or dyes or any other chemical. Therefore, the Municipal Board is entitled to charge the octroi duty at the rate of 0.75% on chemicals and at the rate of Rs. 1/- per quintal on starch in view of the notification dated 24.12.1987 (Annex.2). But the excess amount of octroi which has been recovered after the filing of the writ petition and has been deposited in terms of the stay order passed by this Court shall be refunded back to the petitioner as the petitioners have deposited the octroi under the orders of this Court . Therefore, whatever excess amount which has been recovered from the petitioner under the orders of this Court shall be refunded back to the petitioners in terms of the aforesaid stay orders. In case there is no stay order passed by this Court then the excess amount which has been recovered by way of octroi after filing of the writ petition shall be refunded back to the petitioner.

30. This writ petition as well as the writ petitions mentioned in Schedule "A'' are allowed as indicated above.

31. In another batch of writ petitions mentioned in Schedule ''B'', Mr. Bhandari, learned Counsel appearing for the respondents submitted that so far as these writ petition (No. 5295/1991 to 5301/1991) are concerned, in these writ petitions, it is apparent that the petitioners have brought the colour which is covered Entry No. 1 55. Therefore, the learned Counsel submitted that these petitioners are squarely covered by Entry No. 155 and they are entitled to pay the duty in terms of Entry No. 1 55.

32. I think the submission of Mr. Bhandari deserves to be accepted. As per the octroi receipt attached with the writ petition it has been clearly mentioned that the petitioner has brought the drum of jax. Since the petitioner has brought the colour which squarely fells under Entry No. 155 as such the respondent has rightly charged octroi at the rate of 155.

33. In the result, these writ petitions mentioned in Schedule "B'' have no merit and the same are dismissed.

